transfer transferring the land *free of encumbrances* on the 24th of April 1943. This he did not do for, although he executed the document, it could not there and then be registered since the land was encumbered at the time when he executed the document. This was a fact known to both the parties and accepted by them. Indeed had it not been accepted by the plaintiff he could have taken immediate steps to recover his deposit and to demand the $4,000 forfeit (or compensation) mentioned in clause 4 of the Agreement. Not only that, but on the very same day the defendant pointed out the plaintiff to the tenants as the man who had bought the land and the plaintiff clearly accepted his new role — a fact which is established by his collection of rents. This Court is therefore of the opinion that, by their conduct at the time that the document was executed and later that same day, there is evidence that they had agreed to vary the terms of the agreement — that the defendant agreed to transfer encumbered land without returning the deposit or paying the forfeit and the plaintiff had agreed to accept the land even though it was encumbered. The sale, therefore, was complete when the document of transfer was executed for it was then that the defendant signed away all his rights in the land. The fact that the purchase price was left in the hands of Mr. Yong Sze Lin — a matter likewise in agreement by the parties — was that he should pay off the encumbrances and so provide the plaintiff with a title which he could register.

I now have to consider the appropriate remedy to which the plaintiff is entitled. That he should recover a valuable judgment is clear — there isn't the shadow of the substance of right or merit in the defence or counterclaim. Without wishing to seem to make any adverse criticism of the competence of the learned and experienced lawyer who drafted the plaintiff's pleadings, it seems to me to be unfortunate that in the amended Statement of Claim he abandoned ground (a) of the prayer — that "the plaintiff be declared the true and lawful owner of the lands...". It seems to this Court to be just the remedy to which the plaintiff *is* entitled. It also seems to this Court that paragraphs (a), (b) and (c) of the prayer in the Amended Statement of Claim are inappropriate on the ground that there is no evidence that they are possible of performance, either within the time specified or at all, by the defendant. It is not, however, for the purposes of this judgment, necessary for me to deal with these paragraphs. In order that the Court may give to the plaintiff the remedy to which he is entitled it is necessary to invoke the aid of paragraph (e) of the prayer — "such further and other relief as may seem just." This omnibus paragraph is in common form and is designed so as to enable Courts to arrive at just decisions and not to penalise a client for an error, omission or oversight on the part of his lawyer. Opportunity was afforded to the learned lawyers to argue the point as to whether or not a relief, the prayer for which had been abandoned, could be resurrected by the use, in the exercise of proper discretion, of the omnibus clause. This Court is satisfied that it can and, in this case, that it should be used in order to satisfy the insistent demand of justice. Under paragraph (e) of the prayer in the Statement of Claim I therefore give judgment that he be declared the true and lawful owner of the lands in question, with costs. The Counter claim is dismissed with costs.

Order accordingly.

SHEO SHANKAR SINGH v. JASMAN BIN ABDUL.

[Orig. Civ. Juris. (Storr, J.) January 24, 1952]

[Singapore — Civil Suit No. 91 of 1951]

Landlord and Tenant — Tenancy — Licensee — Form of action.

This is an action for possession brought against the defendant whom the Court found to be a licensee of the plaintiff; the licence was revoked. The defendant submitted that an action for trespass and not one of possession was proper.

Held, following **Booker v. Palmer**(1) that an action for possession properly lies.

Case referred to :—

(1) *Booker v. Palmer* (1942) 2 All E.R. 674.

ACTION for possession.

F. R. N. H. Massey for the plaintiff.

L. A. J. Smith for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Storr, J. : — I am quite satisfied from the evidence before me that on the true facts of this case O. R. Nadar (deceased) let the house and compound of No. 73 Buffalo Road, including the present huts Nos. 75A and 75B, to the plaintiff's predecessor in title and to the plaintiff. Having seen the premises and the plans exhibited, to hold otherwise would be absurd. The garage No. 75 (old No. 73A) is an entirely separate building having no connection at all with No. 73.

I accept the evidence of the plaintiff and his witnesses as to the fact that the defendant was allowed to occupy No. 75B with another employee of the Trustees of the estate of O. R. Nadar (deceased) as an act of kindness and no rent was charged. The

defendant and his witnesses did not impress me as truthful witnesses and I came to the conclusion that the evidence of the rent collector for the Trustees, Muttaya, and of the Trustees, Chidamabaram and Perumal, of O. R. Nadar (deceased) themselves was most unreliable and inaccurate and I was unable to believe them. In my opinion their evidence was given with a view to enable the present owner of No. 73 to obtain a right to the possession of No. 75A and 75B. Although the present owner Nadaison is not before the Court, I feel I should say that I consider his action of going behind the backs of his tenants of No. 73 and getting the two huts in the compound of No. 73 renumbered for his own ends most reprehensible. No doubt, he did it out of greed in an endeavour to get more rent out of a property he had bought subject to existing tenancies. Further I am surprised that Chidambaram and Perumal, two of the sons of O. R. Nadar (deceased), a man well respected during his life time, should have lent themselves to such doubtful practices as agreeing to pay rent some months after the sale to Nadaison for huts one of which through the kindness of their previous tenant, the plaintiff, their employees had been permitted to occupy.

On the above facts, therefore, I hold that the defendant is only a licensee of the plaintiff and, on such licence being revoked, he must necessarily quit. The plaintiff revoked the licence to the defendant to occupy by notice (1) to him personally on the 15th February, 1950, and (2) to his employers on the 27th January, 1951, and the defendant not giving up possession the plaintiff brought this action.

The defendant's Counsel submitted that the form of action was wrong; it should have been one for trespass and not for possession, but on considering the authorities cited by Counsel for both parties and particularly the case of *Booker v. Palmer*[1] cited by Counsel for the plaintiff, I can see nothing wrong in the form of action.

There will be judgment for the plaintiff for possession of that portion occupied by the defendant of what is now known as No. 75B, Buffalo Road, and damages at the rate of $10 per month from the date when the notice terminating the licence to him expired (i.e. 17th February, 1950) to date when possession given to plaintiff and costs. Stay of execution as to possession to 29th February, 1952.

Judgment for the plaintiff.

KOH SEOK CHOO (m.w.) v. SIM CHIOW MOH.

[Orig. Civ. Juris. (Storr, J.) January 24, 1952]

[Singapore — Suit No. 353 of 1951]

Nuisance — Vibration from piling work — Structural damages.

The defendant began building operations on land adjoining the plaintiff's house. The vibrations set up by piling operations caused damage to the house.

Held, the defendant was liable for actionable nuisance.

Cases referred to :—

(1) *Hoare & Co. v. McAlpine* (1923) 1 Ch. 167; 92 L.J. Ch. 81.

(2) *Rylands v. Fletcher* L.R. 3 H.L. 330.

(3 *Wilkins v. Leighton* (1932) 2 Ch. 106.

ACTION for damages.

F. B. Oehlers for the plaintiff.

L. A. J. Smith for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Storr, J. : — The plaintiff is the owner of No. 14, Birch Road, Singapore — an end house of a row of 4 terrace shop houses adjoining the defendant's land. In May, 1950, the defendant commenced building operations on his land. He did certain excavation for the purpose of preparing the ground for piling — the normal method adopted for making foundations for buildings in that vicinity. He first "shored up" the end wall of the plaintiff's house to prevent subsidence from the excavation and any damage likely to be caused by piling operations.

At the end of May, 1950, the plaintiff gave notice to the defendant that she would hold him responsible for any "damage, breakage, and etc. to the wall of my house that may eventuate as a result of your work." The defendant continued with his building and certain piling operations were carried on during the month of June and possibly for a few days in July. The plaintiff alleges that due to the excavation and/or vibrations caused by the piling operations her house suffered damage (1) cracks in the cross walls, (2) cracked tiles on the roof and in consequence the roof leaked, and (3) the floor boards on the first floor became loose owing to the cracks in the cross walls, and she claimed that the defendant is liable for all the damage suffered by the house through the excavation and the vibrations caused by the piling operations and the resulting loss in the value of the house by reason of such damage.